

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter Of:

Bishop Tube Site
East Whiteland Township,
Chester County, Pennsylvania
Constitution Drive Partners, L.P.
700 South Henderson Road, Suite 225
King of Prussia, PA 19406

Prospective Purchase Agreement

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("CO&A") is entered into and effective this 17th day of March, 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") or ("DEP") and Constitution Drive Partners, L.P., 700 South Henderson Road, Suite 225, King of Prussia, PA 19406 ("Developer").

FINDINGS

The Department made and determined the following findings, which Developer agrees are true and correct:

A. The Department is the agency of the Commonwealth of Pennsylvania ("Commonwealth") vested with the duty and authority to administer and enforce the provisions of the Clean Streams Laws ("CSL") 35 P.S. § 691.1 et seq., the Solid Waste Management Act ("SWMA"), 35 P.S. §6018.101 et seq., the Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. § 6020.101 et seq., the Storage Tank and Spill Prevention Act ("STSPA"), 35 P.S. § 6021.101 et seq., the Land Recycling and Remediation Standards Act ("Act 2"), 35 P.S. § 6026.101 et seq., Section 1917-A of the Administrative Code, 71 P.S. § 510-17, and rules and regulations duly promulgated thereunder. The Department is also the agency of the Commonwealth vested with the duty and responsibility to work with the United States Environmental Protection Agency

("EPA") to implement and enforce the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

B. Developer is a Pennsylvania Limited Partnership with a business address of 700 South Henderson Road, Suite 225, King of Prussia, PA 19406.

C. The Bishop Tube HSCA Site ("Site") is a site within the meaning of HSCA. The Site is located approximately a quarter of a mile south of U.S. Route 30, East Whiteland Township, Chester County, Pennsylvania. The Site consists of land totaling approximately 13.7 acres in size. The Site is identified as Chester County Tax Parcel Number UPI 42-04-0321.020.

D. The Site was formerly used as a precious metals processing and stainless steel fabricating facility between the early 1950s and the late 1990s. Prior environmental investigations, conducted on behalf of Site owner Christiana Metals Corporation ("Christiana") in the 1980s and 1990s, and later on behalf of the Department, have identified environmental impacts from the prior manufacturing operations at the Site. Specifically, soils at the Site, groundwater at and potentially migrating from the Site, and surface water and sediments in Little Valley Creek, which runs through the eastern portion of the Site, have been found to be impacted primarily by chlorinated solvents, including trichloroethylene ("TCE"), as well as other hazardous substances. The results of the investigations performed for Christiana and the Department are summarized in two recent reports prepared for the Department by Baker Environmental, Inc. ("Baker"), including a "Final Supplemental Soil Characterization Report," dated June 30, 2003, and a "Final Phase III Supplemental Groundwater Investigation Report," dated July 2, 2004.

E. In addition to the two reports referenced in Paragraph D above, the Department

has in its files other studies, inspection reports, sample results, and general files relating to releases or threats of releases at the Site, including but not limited to the documents listed in Exhibit A attached hereto and incorporated herein by reference.

F. The environmental contamination identified in the reports described in Paragraph D above and in the other studies, reports, analytical data and files described in Paragraph E above shall constitute "Existing Contamination" for purposes of this CO&A. The Existing Contamination constitutes a release or threat of release of hazardous substances and/or contaminants within the meaning of HSCA.

G. Developer has represented to the Department that Developer has neither caused, contributed to, nor is otherwise responsible for any releases or threat of releases of hazardous substances or contaminants at or from the Bishop Tube HSCA Site. The Department is not aware of any information to the contrary which would indicate such responsibility.

H. As part of its responsibility under HSCA, the Department has incurred and/or will continue to incur response costs as that term is defined under HSCA, relating to the Bishop Tube HSCA Site.

I. Developer has entered into an agreement to purchase the Site, and Developer plans to develop the Site for commercial purposes.

J. Section 701(a) of HSCA provides that owners and operators of Sites during the time of release or threatened release of hazardous substances shall be liable for response costs incurred by the Department. As a result, the Department has determined that Developer is or could become a potentially responsible person within the meaning of Section 701(a) of HSCA

for the releases or threatened releases of hazardous substances or contaminants at the Site.

K. In connection with its intended purchase and redevelopment of the Site, Developer desires to enter into this CO&A for the purpose of resolving any potential environmental liability to the Commonwealth associated therewith by receiving a covenant not to sue from the Commonwealth and contribution protection under HSCA relating to Existing Contamination as set forth in this Consent Order and Agreement. In exchange for this covenant from the Department, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer commits to complete the necessary and appropriate investigation and/or remediation of soils at the Site in order to demonstrate attainment of a remediation standard for soils established pursuant to Act 2. For purposes of this Consent Order and Agreement, remediation of soils shall mean remediation of soils located within the unsaturated zone between the ground surface and the groundwater.

L. It is Developer's intent that Developer's performance of investigation and due diligence activities prior to acquisition of the Site and Developer's investigatory and remedial activities relating to Site soils as contemplated to be performed by Developer hereunder shall satisfy Developer's obligation to undertake all appropriate inquiry and exercise appropriate care with respect to hazardous substances at the Site as required to qualify as a "bona fide prospective purchaser" pursuant to Section 101(40) of CERCLA, 42 U.S.C § 9601(40).

M. While the Department makes no commitment to funding any remediation of the contaminated groundwater at the Site, the Department recognizes that the HSCA program may, at some point, provide a source of funds towards addressing the releases or threatened releases of hazardous substances or contaminants in groundwater at the Site.

ORDER

After full and complete negotiation of all matters set forth in this CO&A and upon the mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Developer, as follows:

1. **Authority:** This CO&A is an Order of the Department authorized and issued pursuant to Section 1102 of HSCA, 35 P.S. § 6020.1102.

2. **Findings:**

(a) Developer agrees that the findings set forth in Paragraphs A through L above, which are incorporated herein by reference, are true and correct, and, in any matter or proceeding concerning the Site involving Developer and the Department, Developer shall not challenge the accuracy or validity of these findings.

(b) The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Work To Be Performed:** In exchange for the benefits conferred by the Department to Developer under this CO&A, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer hereby agrees that, by March 1, 2009, Developer shall undertake investigation and/or remediation of soils at the Site necessary to demonstrate attainment with a non-residential statewide health standard or site-specific standard under Act 2 for soils at the Site in accordance with the Remedial Action Work Plan ("Plan") attached hereto as Exhibit B and incorporated herein by reference. In this regard, Developer shall follow all required procedures and notices under Act 2 within the time frame set

forth in this paragraph.

4. **Access and Right of Entry:** Developer hereby grants to the Department, its employees, agents, contractors and subcontractors, access and right of entry to the Site for the performance of any response actions the Department may deem necessary or appropriate for the Site. The Department will use best efforts, and shall cooperate with Developer, to avoid any unreasonable interference with Developer's business activities at the Site during any access or entry by the Department or its contractors; provided however, that Developer recognizes that remediation of contaminated groundwater at the Site may involve certain technical activities which are necessarily intrusive by nature. The Department agrees to provide reasonable advance notice to Developer or its attorney prior to entry upon the Site by the Department, its employees, authorized representatives, contractors and others under the direction of the Department.

Nothing in this paragraph is intended, nor shall it be construed, to limit any right of access or entry that the Department may otherwise have by operation of law.

5. **Non-Exacerbation:** Developer shall not contribute to or otherwise exacerbate, by act or failure to perform a legal duty, any Existing Contamination attributable to the Site. In the event that Developer discovers or is otherwise placed on notice that it has contributed to or otherwise exacerbated the Existing Contamination, Developer shall immediately take steps to abate any such exacerbation in a manner approved by the Department. The Parties agree that the Developer's performance of the soil remediation activities in accordance with the requirements of Paragraph 3 and Act 2 above shall not be deemed to contribute to or otherwise exacerbate Existing Contamination at the Site.

6. **Non-Interference:** Developer shall not interfere with or impair any response

actions taken by the Department, or any other person or entity under the auspices of the Department with regard to the Existing Contamination or any other contamination identified at the Site. The parties agree that the Developer's performance of the soil remediation activities in accordance with the requirements of Paragraph 3 above and Act 2 shall not be deemed to interfere with or impair any response actions taken by the Department.

7. **Department's Covenant Not to Sue:** Subject to the Reservation of Rights provided in Paragraph 8 below, the Department covenants not to sue or take any administrative or judicial action against Developer for response costs, response actions, civil penalties, natural resource damages, or injunctive relief, including encumbering the Property (through lien or otherwise), arising from or relating to the release and/or threatened release of hazardous substances defined as Existing Contamination at the Site. These covenants extend only to Developer, except as they may be transferable as stated below and may terminate at the Department's sole discretion upon Developer's failure to meet any of the requirements of the CO&A. These covenants shall take effect upon the effective date of this CO&A.

8. **Reservation of Rights:**

(a) Notwithstanding any other provision of this CO&A, the Department reserves the right to take any action, administrative or otherwise, against Developer with regard to response costs or response actions at the Site if:

(1) The Department receives previously unknown information that indicates that Developer, prior to the execution date of this CO&A, caused, contributed to, or is otherwise liable (other than for the reasons described in Paragraph J, supra) for any releases of hazardous substances or contaminants at or from the Site; or

(2) Developer has made in any material respect a false or inaccurate representation or statement in a record, report or document relating to the release or threatened release of hazardous substances or contaminants at the Site.

For purposes of this paragraph, the information known to the Department includes the information set forth in this CO&A, contained in the Department's files at the time of execution of this CO&A, or in the documentation identified as describing Existing Contamination at the Site.

(b) The Department's Covenant Not to Sue set forth herein shall not apply to the following claims by the Department against Developer for:

- (1) Failure to meet the requirements of this CO&A;
- (2) Future releases of hazardous substances or contaminants outside the boundaries of the Site, except to the extent of Existing Contamination;
- (3) Future releases or threatened releases of hazardous substances or contaminants at the Site, except to the extent of Existing Contamination, provided that passive migration of Existing Contamination shall not be deemed to constitute a future release or threatened release of hazardous substances or contaminants at the Site; or
- (4) Past, present, or future violations of federal or state criminal law.

9. **Contribution Protection.** The Department agrees that, by entering into this CO&A, Developer is a person who has resolved any potential liability to the Commonwealth for the releases or threatened releases of hazardous substances or contaminants at the Site and therefore shall be afforded any existing legal protection provided in Section 705 of HSCA, 35 P.S. § 6020.705, or Section 113(f)(2) of CERCLA, 42, U.S.C. §9613(f)(2) against any claims for contribution that may be asserted against Developer, regarding matters addressed in this CO&A.

Developer acknowledges that the Department has no obligation to defend it in any suit, demand or claim for contribution for any matters arising from the release or threatened release of hazardous substances or contaminants at the Site, arising out of response actions at the Site, or arising out of this CO&A. The contribution protection afforded by this Paragraph shall be in addition to the exclusions from or defenses to liability that may be available to Developer, its successors and assigns, under statutory or common law.

10. Transferability.

(a) This Consent Order and Agreement, excluding Developer's obligations pursuant to Paragraph 3 above, shall be transferable to any lessees or subsequent purchaser of any portion of the Site provided that: (1) such lessee or subsequent purchaser did not cause or contribute to, or is otherwise not liable for, any of the Existing Contamination; (2) such lessee or subsequent purchaser agrees in writing to all terms and conditions set forth in this Consent Order and Agreement, excluding those found in Paragraph 3, with respect to its portion of the Site; and (3) the Department is notified within fourteen (14) days of execution of such lease or purchase. For purposes of condition (2) above, the lessee or subsequent purchaser may satisfy this condition by submitting to the Department a copy of this CO&A, which has been endorsed by lessee or subsequent purchaser with a statement indicating its agreement to all terms and conditions set forth herein, excluding Paragraph 3. In the event of such transfer, the lessee or subsequent purchaser shall be entitled to the full benefits of this CO&A, including but not limited to the Covenant Not to Sue set forth in Paragraph 8 above and the contribution protection provided by this CO&A and discussed in Paragraph 9 above.

(b) In the event that Developer or a subsequent transferee desires to lease or

transfer all or a portion of the Site to a lessee or subsequent purchaser, and to transfer to the lessee or subsequent purchaser Developer's (or transferee's as the case may be) obligations pursuant to Paragraph 3 above with respect to the portion of the Site to be leased or transferred, then Developer may request the Department to amend this CO&A to specify that the lessee or subsequent purchaser shall be solely responsible for any remaining obligations of Paragraph 3 relating to the lessee's or subsequent purchaser's portion of the Site. The Department, in its discretion, may agree to such amendment provided that all of the following conditions have been satisfied: (a) the Department determines that the lessee or subsequent purchaser is financially capable of completing the remaining obligations of Paragraph 3 at the lessee's or subsequent purchaser's portion of the Site; (b) the lessee or subsequent purchaser did not cause or contribute to any contamination at the Site; and (c) the lessee or subsequent purchaser agrees that, with respect to its portion of the Site, it shall be solely responsible for such remaining obligations of Paragraph 3, shall comply with all other terms and conditions set forth in this CO&A and shall agree to become a signatory to this CO&A under these conditions. In the event of such transfer, the lessee or subsequent purchaser shall be entitled to the full benefits of this CO&A, including but not limited to the Covenant Not to Sue set forth in Paragraph 8 above and the contribution protection described in Paragraph 9 above.

(c) Notwithstanding anything to the contrary, any transfer by Developer or a subsequent transferee pursuant to this paragraph 10 shall not terminate the full benefits of the CO&A with respect to said Developer or subsequent transferee.

11. **Correspondence with the Department.** All correspondence with the Department concerning this CO&A shall be addressed to:

Mr. Stephan Sinding
Environmental Cleanup Program Manager
Pennsylvania Department of Environmental Protection
Southeast Regional Office
2 East Main Street
Norristown, PA 19401

12. **Correspondence with Developer.** All correspondence with Developer concerning this CO&A shall be addressed to:

Constitution Drive Partners, L.P.
700 South Henderson Road, Suite 225
King of Prussia, PA 19406
Attn: Kevin Silverang, President, Constitution Drive Acquisition Corporation,
General Partner of Constitution Drive Partners, L.P.

With a copy to:

Attorney for Developer:

Jonathan H. Spergel, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue - Suite 500
Bala Cynwyd, PA 19004

13. **Severability:** The paragraphs of this CO&A shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

14. **Entire Agreement:** This CO&A shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

15. **Attorney's Fees:** The Parties shall bear their respective attorney's fees, expenses, and other costs in prosecution or defense of this matter, or any related matters, arising

prior to the execution of this CO&A.

16. **Modifications:** No changes, additions, modifications or amendments to this CO&A shall be effective unless they are set forth in writing and designed by the Parties hereto.

17. **Titles:** A title used at the beginning of any paragraph of this CO&A may be used to aid in the construction of that paragraph but shall not be treated as controlling.

18. **Existing Obligations Unaffected.** Except as provided above, and subject to the terms and conditions contained herein, nothing in this CO&A is intended, nor shall it be construed, to relieve or limit any obligation on the part of Developer to comply with any applicable existing or subsequent statute, regulation, permit or order of the Department. In addition, nothing in this CO&A is intended, nor shall it be construed, to authorize any violation of any statute, regulation, order or permit issued by the Department.

19. **Relation to Other Parties:** Except as specifically provided herein, nothing in this CO&A is intended, nor shall it be construed, to diminish or modify in any way the obligations of any other person or entity with respect to the Site.

20. **Responsibility of Developer:** Developer shall be liable for any violations of this CO&A by Developer, including those violations caused by, contributed to, or allowed by its agents, servant or privies, to the extent that they are acting as such, and any persons, contractors and consultants acting for or under Developer.

21. **Remedies for Breach:** Developer's substantial failure to comply with any material provision of this CO&A shall be deemed a breach, and in the event of such breach, the Department may, in addition to the remedies prescribed herein, institute any equitable,

administrative, civil or criminal action, including an action to enforce this CO&A, against Developer. These remedies are cumulative, and the exercise of one shall not preclude the exercise of another. The determination by the Department not to pursue a remedy shall not be construed as waiver of that remedy.

22. **Service of Process:** Service of any notice for any purpose under this Consent Order and Agreement shall be made by mailing a copy of the notice by U. S. Mail First Class, registered mail, certified mail, or a nationally recognized overnight delivery service to the addresses set forth in Paragraphs 11 and 12.

23. **Decisions Under Consent Order:** Any decision that the Department makes under the provisions of this CO&A shall not be deemed to be a final action of the Department and shall not be appealable to the Environmental Hearing Board or to any Court until such time as the Department enforces this CO&A or pursues equitable, administrative, civil or criminal action based on the belief that Developer has failed to comply with any material provision of this CO&A. At no time, however, may the parties challenge the content or validity of this CO&A or challenge the Findings agreed to in this CO&A.

24. **Publication and Comment:**

(a) Notice of this CO&A shall be published in the Pennsylvania Bulletin and in a newspaper of general circulation in the area of the Site pursuant to Section 1113 of HSCA, 35 P.S. §6020.1113, and the Department shall receive and consider comments relating to his CO&A for a period of sixty (60) days from the date of publication. The Department reserves the right to withdraw its consent to this CO&A if, during the public comment period, the comments disclose facts or considerations previously unknown to the Department which indicate to the Department,

in its reasonable discretion, that this CO&A is inappropriate, improper, or not in the public interest. Said publication and public comment period shall not affect the effective date of this CO&A.

(b) This CO&A shall be final upon the date that the Department files a response to any significant comments received during the public comment period, if described in Paragraph 23(a) above or notifies Developer that no comments were received. If the Department notifies Developer that it is withdrawing its consent to this CO&A in response to public comment received pursuant to Paragraph 24(a) above, the terms of this CO&A shall be void and of no effect and shall not be used as evidence in any litigation or other proceeding.

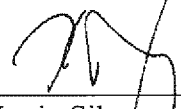
25. **Effective Date:** This Consent Order and Agreement shall become effective upon the date first entered above, provided that Developer takes title to the Site within forty five (45) days of the effective date.

26. **Counterparts:** This Consent Order and Agreement may be executed in counterparts, each of which counterparts shall constitute an original, but which counterparts together shall constitute the same Consent Order and Agreement. The delivery by any party hereto of a telecopy or facsimile signature shall have the same legally binding effect as the delivery of an original signature.

IN WITNESS HEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representations of Developer certify, under penalty of law, as provided in 18 Pa. C.S.A. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Developer, that Developer consents to the entry of this Consent Order and Agreement as a final ORDER of the Department, and that Developer hereby knowingly waives their right to appeal this Consent Order and Agreement and to challenge its contents or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, the Administrative Agency Law, 2 Pa C.S. § 103(a) and Chapters 5A and 7A, or any other provision of law. Signature by Developer's attorney certifies only that the agreement has been signed after consulting with counsel.

Date: 3/17/05

FOR CONSTITUTION DRIVE
PARTNERS, L.P.:


Kevin Silverang, President
Constitution Drive Acquisition Corporation,
its General Partner

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Date: KENNEDY SIGNED

Stephan Sinding
Environmental Program Manager,
Environmental Cleanup Program

Date: 3/17/05

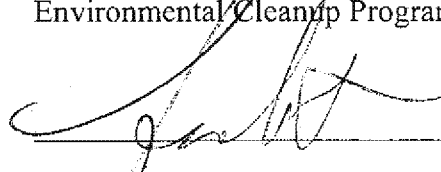

Anderson Lee Hartzell,
Regional Supervising Counsel

EXHIBIT A

INDEX OF ENVIRONMENTAL DOCUMENTS IN PADEP FILES

"Bishop Tube Company, Closure Plan for Change of Status from Storage Facility to Generator," Bishop Tube Co., July 1, 1986.

"Ground Water Quality Investigation Report for Bishop Tube Co., Frazer, Pennsylvania," BCM, May 1988.

"Results of the Soil Vapor Survey, Bishop Tube Corporation, Frazer, Pennsylvania," BCM Engineers, May 15, 1989.

"Groundwater Remediation Work Plan for Christiana Metals Corporation, Frazer, Pennsylvania," BCM Engineers, June 1989.

"Results of Implementation of Groundwater Remediation Work Plan, Phase I," BCM Engineers, January 1990.

"Fourth Quarter 1989 NPDES Groundwater Monitoring Results," BCM Engineers, April 4, 1990.

"First Quarter 1990 NPDES Groundwater Monitoring Results," BCM Engineers, April 27, 1990.

"Registration of Storage Tanks Form," Alloy Steel Corp./Bishop Tube Facility, June 11, 1990.

"Results of Well Search for Christiana Metals Corporation, Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, August 1990.

"Results of Soil Vapor Survey in the Degreaser Area at the Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, August 1990.

"Scope of Work For Ground Water Investigation and Remediation for Christiana Metals Corporation, Frazer, Pennsylvania," BCM Engineers, November 1990.

"Summary of Quarterly Groundwater Monitoring Results for Christiana Metals Corporation, Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, December 1991.

"Underground Storage Tank Closure Report," Brandywine Environmental Compliance, Inc., May 1993.

Correspondence from PADEP to Christiana Metals Corp, No Further Action for Removal of Two 5,000-Gallon Fuel Oil USTs, September 8, 1993.

"Preparedness, Prevention, and Contingency Plan for Damascus-Bishop Tube Company, Inc., Frazer, Pennsylvania," BCM Engineers, June 1994.

"Site Characterization and Interim Remedial Action Plan," O'Brien and Gere, September 1998.

"Ground Water Interim Remedial Action Work Plan," O'Brien and Gere, May 1999.

"HSCA Response Justification Document - Bishop Tube Site," PADEP, March 13, 2000.

"Analytical Sampling Results from Bishop Tube Project, June through August 2001," PADEP, September 25, 2001.

"Bishop Tube Site - 2001 Soil Vapor Survey," PADEP, December 14, 2001.

"Bishop Tube Site - Discreet Interval Sampling MW-5, MW-17 and MW-19," PADEP, December 18, 2001.

"Phase I - Site Characterization Report, Soils, Sediment, Surface Water, and Shallow Groundwater, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., January 11, 2002.

"Phase II - Ground Water Investigation Report, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., June 2002.

"Phase III Supplemental Soil Characterization Report," Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania", Baker Environmental, Inc., June 30, 2003.

"Bishop Tube Site, Little Valley Creek Surface Water and Spring Monitoring, Sampling Event Report," PADEP, August 2003.

Correspondence from PADEP to Mr. Robert Gerlach, Sampling Results 30 Conestoga Road, September 2, 2003.

"Phase III Supplemental Groundwater Characterization Report", Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., July 2, 2004.

"Soil Gas and Shallow Groundwater Sampling Report, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., August 27, 2004.

Correspondence from PADEP regarding Indoor Air Sampling Results, January 28, 2005.

EXHIBIT B

PRELIMINARY REMEDIAL ACTION WORK PLAN